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UNCLAS SECTION 01 OF 02 TEGUCIGALPA 000405

SIPDIS

SENSITIVE

DEPT FOR EB/IPC:SWilson
DEPT PLEASE PASS TO USTR FOR BPeck
DEPT PLEASE PASS TO DOC FOR KSchlegelmilch
DEPT PLEASE PASS TO USPTO FOR JUrban/DLashley-Johnson
DEPT PLEASE PASS TO LOC FOR Stepp

E.O. 12958: N/A

TAGS: [ECON](#) [ETRD](#) [KIPR](#) [HO](#)

SUBJECT: HONDURAS: INPUT FOR 2004 SPECIAL 301 REVIEW

REF: A) STATE 29551 B) STATE 38126

1. (SBU) Summary and Comment: Honduran legislation regarding Intellectual Property Rights (IPR) is largely in compliance with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs). However, Honduran authorities lack the personnel and expertise necessary to wage a truly effective campaign against copyright or other IPR violations. There have been no significant moves in the past year by the Government of Honduras (GOH) to either strengthen or weaken the protection of IPR in Honduras. Embassy therefore recommends that Honduras remain off the Special 301 watch list. End Summary and Comment.

2. (U) The responses below are keyed to paragraph 17 of Ref A.

A) Optical Media Piracy (CDs, VCDs, DVDs)

3. (U) Although Honduras has yet to experience large-scale in-country optical pirating, pirated goods are imported from neighboring countries, and the piracy of books, sound and video recordings, compact discs and computer software is still widespread. Confiscation has been erratic, and usually involves minor seizures of compact discs. Success in controlling optical piracy rests primarily on the GOH's ability to effectively implement its current laws, rather than a need for further legislation.

B) Use/Procurement of Government Software

4. (U) The number of government agencies which are using legally licensed software increased during 2003, largely due to private sector efforts to persuade government entities to obtain legal license to the software that they were already using. Several government agencies continue to use illegally-procured software, or to use multiple copies based on a single legal purchase, primarily due to stringent budget constraints. U.S. software companies, working closely with Honduran authorities and the U.S. Embassy, hope to whittle down the number of non-compliant ministries in the coming months.

C) TRIPs Compliance and Other IP-Related Issues

5. (U) No new TRIPs-related legislation was introduced or passed by the Honduran Congress in 2003, nor were any amendments to existing legislation introduced or passed.

6. (U) Honduras largely complied with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) by the January 1, 2000, deadline. In 1999, the Honduran Congress passed two laws to correct deficiencies in previous legislation concerning copyrights, patents and trademarks. The Copyright Law added more than 20 different criminal offenses related to copyright infringement and establishes fines and suspension of services that can be levied against offenders. The Law of Industrial Property, Decree 12-99E, covers both trademarks and patents, and includes modifications on patent protection for pharmaceuticals, extending the term from seventeen to twenty years to meet international standards. The term for cancellation of a trademark for lack of use was extended from one year to three years. To be protected under Honduran law, patents and trademarks must be registered with the Ministry of Industry and Trade.

7. (U) As soon as two new laws governing the designs of integrated circuits and plant variety protection are approved by the National Congress, Honduras will be in complete compliance with the TRIPs Agreement. Post has emphasized the importance of adoption of these two laws to the Minister of Industry and Trade and the Director of the IPR Office within that Ministry. GOH officials assert that the two laws will be passed during 2004.

8. (U) Honduras became a member of the World Intellectual

Property Organization (WIPO) in 1983, ratified the Paris Convention for the Protection of Industrial Property in 1994, and became party to both the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty in 2002. Honduras and the U.S. initialed a Bilateral Intellectual Property Rights (IPR) Agreement in March 1999, but substantive issues arose during the language conformity process. Instead, recent efforts to push the GOH for additional IPR commitments have been pursued as part of the negotiations for a U.S.-Central America Free Trade Agreement (CAFTA). If ratified, CAFTA should significantly improve the level of IPR protection in the region. Approval of CAFTA by the Honduran Congress in 2004 is considered very likely.

D) Enforcement

9. (U) Honduran Copyright Law specifies three different avenues in the prosecution of copyright infringement cases: administrative, civil and criminal. After confiscating pirated goods, the GOH can file an administrative case that may result in a fine. However, the law requires companies whose rights have been violated to file civil and criminal charges. Few U.S. companies have asserted their right to file either a civil or criminal case, leaving the resource-strapped prosecutor's office (Ministerio Publico) responsible for the lawsuits. As a result, many cases are not tried to the full extent of the law.

10. (U) Enforcement of the copyright law relies largely on periodic sweeps in the market and on investigations carried out after an accusation has been made. The GOH Customs and Tax Authority (DEI) is responsible for impeding the flow of illegal goods into Honduras. IPR officials have commented in the past that police and DEI officials lack the skills and resources to identify and control the flow of pirated products.

11. (U) The protection of data exclusivity by the GOH is an issue that has been raised by some U.S. companies. In 2002, a U.S. pharmaceutical company complained that the Ministry of Health, in approving a competing company's pharmaceutical product, did not respect their data exclusivity rights as guaranteed under article 39 of the WTO TRIPS agreement and article 77 of Honduras' Industrial Property Law. (Honduran law provides five-year exclusive use of data provided in support of registering pharmaceutical products.) The Ministry of Health approved the competing pharmaceutical product despite communication from Honduras' IPR Division that the U.S. company's research and data were protected under Honduran law. The U.S. company argues that in order for the competing product to be legally registered with the Ministry of Health, the company needs to provide the research and data to support their application. When a similar situation arose with a separate application in 2003, the Ministry of Health recognized that the competing company's product was a copy of the U.S. company's protected product, and did not approve the competing company's application.

12. (U) Some U.S. companies have expressed concern that attempts to prosecute computer software infringement cases have been met with inadequate support by officials in the Ministry of Industry and Trade's IPR Division and the Attorney General's office.

13. (U) The Ministry of Industry and Trade makes good faith efforts to respond to complaints about satellite piracy, and the telecom regulatory agency, CONATEL, checks closely on compliance with anti-piracy rules before extending cable TV licenses. However, the ministries need more staff to ensure full enforcement. In 2003, the Embassy received a complaint from one U.S. company which argued that the Ministry of Industry and Trade's IPR Division appeared to be singling out the U.S. company for investigations of satellite piracy, while ignoring alleged violations on the part of the U.S. company's Honduran rival. Embassy officials have discussed the issue with appropriate Ministry and IPR officials, urging a strong and balanced approach to investigations of all IPR violations.

Palmer